

Applicant's Amendment of 11 June 2008 is in accordance with 37 CFR 1.121(c).

Applicant's Response of 18 March 2008 has been considered. Applicant urges that the two Brown et al published applications be accorded an effective filing date of 12 July 2002, because the provisional applications filed in July 2001 allegedly do not contain the sequences claimed in the Brown et al applications and instantly claimed by Applicant. Thus, Applicant urges that they are the Senior Party, with an effective filing date of 24 April 2002 or earlier.

The Examiner notes that the Brown et al provisional application 60/305,363 filed 31 July 2001 discloses SEQ ID NO:4, a 686 amino acid-long protein, and a nucleic acid encoding it. This provisional application also claims a nucleic acid which is at least 70% identical to the nucleic acid encoding SEQ ID NO:4; as well as transformed plants containing it, and a method of their use in hybrid plant production (see, e.g., claims 1, 15-19 and 26). The protein set forth in SEQ ID NO:4 of the patents' prior provisional application appears to be at least 70% identical to instantly claimed SEQ ID NO:3, so that the nucleotide sequence encoding it may be at least 70% identical to SEQ ID NO:2 as instantly claimed. Thus, the Brown applications may still be presumed as the Senior Party on their face.

Applicant is referred to MPEP 2304.02 and 37 CFR 41.202 for the procedure for suggestion an interference, excerpted below.

*37 CFR 41.202. Suggesting an interference.*

(a) *Applicant*. An applicant, including a reissue applicant, may suggest an interference with another application or a patent. The suggestion must:

(1) Provide sufficient information to identify the application or patent with which the applicant seeks an interference,

(2) Identify all claims the applicant believes interfere, propose one or more counts, and show how the claims correspond to one or more counts,

(3) For each count, provide a claim chart comparing at least one claim of each party corresponding to the count and show why the claims interfere within the meaning of § 41.203(a),

(4) Explain in detail why the applicant will prevail on priority,

(5) If a claim has been added or amended to provoke an interference, provide a claim chart showing the written description for each claim in the applicant's specification, and

(6) For each constructive reduction to practice for which the applicant wishes to be accorded benefit, provide a chart showing where the disclosure provides a constructive reduction to practice within the scope of the interfering subject matter.

(d) *Requirement to show priority under 35 U.S.C. 102(g)* . (1) When an applicant has an earliest constructive reduction to practice that is later than the apparent earliest constructive reduction to practice for a patent or published application claiming interfering subject matter, the applicant must show why it would prevail on priority.

(2) If an applicant fails to show priority under paragraph (d)(1) of this section, an administrative patent judge may nevertheless declare an interference to place the applicant under an order to show cause why judgment should not be entered against the applicant on priority. New evidence in support of priority will not be admitted except on a showing of good cause. The Board may authorize the filing of motions to redefine the interfering subject matter or to change the benefit accorded to the parties.

Applicant is given ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this communication to respond. Failure to respond within the specified time period will operate as a concession of priority for the subject matter of the required claim, but will not result in abandonment of this application. See 37 CFR 41.202(c) and MPEP § 2304.04(b). THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THE TIME SPECIFIED IN THIS ACTION.

If the interference would be with a patent, applicant must also comply with 37 CFR 41.202(a)(2) to (a)(6).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (571) 272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David T Fox/

Primary Examiner, Art Unit 1638

September 11, 2008